STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2006 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

2006 ANNUAL REPORT

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INTRODUCTION

Since the commission's inception in 1961, 99 individuals have served as members of the commission. During this 45-year period, the members have considered some 33,500 complaints and have presided over 182 formal proceedings.

Until 1995, the commission was comprised of nine members: five judges appointed by the California Supreme Court, two lawyers appointed by the California State Bar Board of Governors and two public members appointed by the Governor. Since 1995, the commission has been comprised of eleven members: three judges appointed by the Supreme Court, two lawyers appointed by the Governor and six public members – two appointed by the Governor, two by the Senate Rules Committee and two by the Speaker of the Assembly.

The breadth of experience among the members has enhanced the commission's ability to fulfill its mandate to protect the public, to enforce rigorous standards of judicial conduct and to maintain public confidence in the integrity and independence of the judicial system.

Commission members are appointed to four-year terms. The members meet seven times a year, and review materials and reports on approximately one hundred and fifty cases for each meeting. Members of the commission do not receive a salary, only reimbursement for meeting related expenses.

This year will be marked by a significant change in the membership of the commission. The terms of office are ending for five commission members: Judge Risë Jones Pichon, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez and Mr. Jose C. Miramontes. These individuals have contributed greatly to our work and to the body of law which guides the commission and the judiciary. Judge Pichon, Mr. Kahn and Mrs. Lui have served as members for eight years. Over the commission's history, only a handful of members have served longer. Both Judge Pichon and Mr. Kahn also served as chair of the commission.

The work of the commission benefits greatly by the members of the judiciary who selflessly give of their time serving as Special Masters in formal proceedings, typically the commission's most challenging cases. The judgment and expertise that they bring to our work is invaluable and greatly appreciated. The Masters who served in 2006 are listed at page vi of this report.

Over these past several years it has been my personal pleasure to work with the dedicated staff of the commission and, in particular, our Director-Chief Counsel Victoria Henley and Legal Advisor Jay Linderman. Their commitment to the mandate of the commission is exceptional. As Mr. Linderman embarks on retirement, we give him special thanks for his years of service and we welcome his successor Bernard Knapp.

As chair of the commission for the past two years, I have had the opportunity to meet and exchange views with jurists throughout the state. My thanks to them for their support and understanding in the discharge of our respective responsibilities to the citizens of California.

Marshall B. Grossman, Esq.

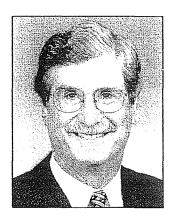
Chairperson

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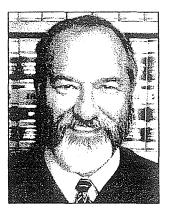
COMMISSION MEMBERS

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal and two trial court judges, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules, and two appointed by the Speaker of the Assembly. Members are appointed to four-year terms. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing authority. The Commission meets approximately seven times a year. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The members of the Commission elect a chairperson and vice-chairperson annually.

COMMISSION MEMBERS - 2006



MARSHALL B. GROSSMAN, ESQ.
Chairperson
Attorney Member
Appointed by the Governor
Appointed: April 10, 2001
Reappointed: March 1, 2005
Term Ends: February 28, 2009



HONORABLE
FREDERICK P. HORN
Vice-Chairperson
Judge, Superior Court
Appointed by the Supreme Court
Appointed: October 22, 2003
Reappointed: March 1, 2005
Term Ends: February 28, 2009



MICHAEL A. KAHN, Esq.
Attorney Member
Appointed by the Governor
Appointed: March 1, 1999
Reappointed: March 1, 2003
Term Ends: February 28, 2007



MRS. CRYSTAL LUI
Public Member
Appointed by the
Speaker of the Assembly
Appointed: April 9, 1999
Reappointed: March 1, 2003
Term Ends: February 28, 2007



HONORABLE
JUDITH D. McConnell
Justice, Court of Appeal
Appointed by the Supreme Court
Appointed: March 30, 2005
Term Ends: February 28, 2009

COMMISSION MEMBERS - 2006



Ms. PATRICIA MILLER
Public Member
Appointed by the
Speaker of the Assembly
Appointed: February 6, 2004
Term Ended: February 28, 2005



MR. Jose C. MIRAMONTES
Public Member
Appointed by the Governor
Appointed: June 18, 2003
Term Ends: February 28, 2007



MRS. PENNY PEREZ
Public Member
Appointed by the
Senate Committee on Rules
Appointed: August 9, 2002
Reappointed: March 1, 2003
Term Ends: February 28, 2007



HONORABLE
RISË JONES PICHON
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
Reappointed: March 1, 2003
Term Ends: February 28, 2007



Ms. Barbara Schraeger
Public Member
Appointed by the
Senate Committee on Rules
Appointed: September 14, 2001
Reappointed: March 1, 2005
Term Ends: February 28, 2009



MR. LAWRENCE SIMI
Public Member
Appointed by the Governor
Appointed: August 17, 2005
Term Ends: February 28, 2009

COMMISSION MEMBERS' BIOGRAPHIES

MARSHALL B. GROSSMAN (Lawyer Member) resides in Los Angeles County. He is a partner in the law firm of Alschuler Grossman LLP. He attended the University of California, Los Angeles and received his law degree from the University of Southern California in 1964, where he was Production Editor of the Law Review and Order of the Coif. Mr. Grossman has served on the boards of the Beverly Hills Bar Association, the Association of Business Trial Lawyers, Legal Aid Foundation, Public Counsel and United Way. He served on the Coastal Commission for many years. He is currently on the boards of Bet Tzedek Legal Services, Jewish Big Brothers/ Big Sisters and the American Jewish Committee. He has served as chairperson of the Commission since March 2005 and was vice-chairperson in 2004.

FREDERICK P. HORN (Judge Member) resides in Orange County. He has been a judge of the Orange County Superior Court since 1993 and was a judge of the Orange County Municipal Court, Harbor Judicial District, from 1991 to 1993. From 2002 to 2006 he served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. He received his law degree from the University of West Los Angeles in 1974, where he wrote for and served as staff on the Law Review. Judge Horn was the chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council from 2002 to 2006. He is also a member of the faculty of the Judicial College and the New Judges Orientation Program, and is a member of the Advisory Committee for the Continuing Judicial Studies Program. He has served as vice-chairperson of the Commission since 2005.

MICHAEL A. KAHN (Lawyer Member) resides in San Francisco. He is a senior partner in the law firm of Folger Levin & Kahn LLP. He attended the University of California, Los Angeles and received his law degree from Stanford University in 1973 where he was Book Review Editor of the Stanford Law Review. During 1973-1974 he clerked for Judge Ben C. Duniway of the United States Court of Appeals for the 9th Circuit. Mr. Kahn is a member of the American Law Institute and was a member of the Northern District California Civil Justice Reform Act Advisory Group. Mr. Kahn was President of Coro Northern California, chairman of the Stanford Law Fund and has held numerous government appointments including chairman of the California Electrical Oversight Board and Independent System Operator. Mr. Kahn served as chairperson of the Commission in 2001 and as vice-chairperson in 1999 and 2000.

CRYSTAL LUI (Public Member) resides in Los Angeles County. Before retirement, she was an accounting and financial analyst with a major reinsurance brokerage firm from 1975 to 1995. She attended California State University, Los Angeles. Mrs. Lui has served as a member of the Asian Pacific Legal Center, the Japanese American Cultural and Community Center and the Los Angeles Public Library Foundation.

IUDITH D. McCONNELL (Justice Member) resides in San Diego County. She has served as the Administrative Presiding Justice of the Court of Appeal, Fourth Appellate District since 2003 and Associate Justice from 2001 to 2003. From 1978 to 1980 she was a judge of the San Diego Municipal Court, and from 1980 to 2001 she was a judge of the San Diego Superior Court. Prior to her appointment to the bench she was in private law practice in San Diego. She also worked for the California Department of Transportation. Justice McConnell received her law degree from the University of California, Boalt Hall School of Law in 1969. She served as a member and vice-chair of the Judicial Council Task Force on Jury System Improvement from 1998 to 2003, and as chair of the Task Force on Judicial Ethics Issues from 2003 to 2004.

PATRICIA MILLER (Public Member) resides in Los Angeles County. She is currently Senior Deputy for Los Angeles Supervisor Yvonne

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BIOGRAPHIES

Brathwaite Burke. Previously, she served as Chief of Staff to Congressman Julian C. Dixon in his Los Angeles office for twenty-two years, and worked for the California Legislature for twelve years. She attended Los Angeles City College. Ms. Miller has served as a member of the Los Angeles City Attorney's Advisory Council, the Certification Board of Infection Control and the Black-Jewish Youth Experience.

JOSE C. MIRAMONTES (Public Member) resides in San Bernardino County. He is currently the Director of Security, Western Region, for the Coca Cola Bottling Company of Southern California. He earned a Bachelor of Science degree in police science and administration from California State University, Los Angeles. He served ten years with the Los Angeles County Sheriff's Department. Mr. Miramontes was the Charter President of the East Los Angeles Chapter of the National Latino Peace Officers Association and served three two-year terms as the California State President and two two-year terms as the National President of the National Latino Peace Officers Association.

PENNY PEREZ (Public Member) resides in Los Angeles County. She presently teaches silver jewelry fabrication. Before leaving to raise a family, she taught elementary school in the Los Angeles Unified School District. She earned a Bachelor of Arts degree in English from the University of California, Santa Barbara. Mrs. Perez has served as a member of Las Doradas, a group supporting the Neighborhood Youth Association's Las Doradas Children's Center in Venice, California.

RISË JONES PICHON (Judge Member) resides in Santa Clara County. She has been a judge of the Santa Clara County Superior Court since 1998 and was a judge of the Santa Clara County Municipal Court from 1984 to 1998. She served as presiding judge of the Santa Clara County Municipal Court from 1990 to 1991. Prior to her appointment to the bench, she was an attorney in the Santa Clara Office of County Counsel from 1979 to 1983 and in the Office of the

Public Defender from 1976 to 1979, and was a court commissioner with the Santa Clara County Municipal Court from 1983 to 1984. She received her law degree from Santa Clara University in 1976. Judge Pichon has served on the California Judicial Council in a number of capacities and participated in numerous judicial education programs. She served as chairperson of the Commission in 2002 and 2003 and as vice-chairperson in 2001.

BARBARA SCHRAEGER (Public Member) resides in Marin County. She is currently the vice-chair of the Board of Directors of the Institute on Aging. She practiced in the field of organizational consulting for twenty years, serving as the Director of the San Francisco Labor-Management Work Improvement Project and as an instructor at the University of San Francisco in Human Relations and Organizational Behavior. She received a Bachelor of Arts degree in English from the University of Wisconsin and a Master of Arts in American Literature from New York University.

LAWRENCE SIMI (Public Member) resides in San Francisco. He is the director of state government relations for Pacific Gas and Electric, where he has worked for the past 25 years. Previously, he was a program manager for Mayors Alioto, Moscone and Feinstein in San Francisco. He has been a board member of a variety of civic and non-profit organizations including San Francisco's Commission on the Aging and Mayor's Fiscal Advisory Committee, Self Help for the Elderly, Society for the Preservation of San Francisco's Architectural Heritage, Mission Education Project, United Cerebral Palsy Association, San Francisco Adult Day Health Network and the Institute on Aging. Currently he serves as President of the Board of Directors of Pine View Housing Corporation and as a member of Senator Dianne Feinstein's Service Academy Advisory Board. He holds a Bachelor of Arts in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.

SPECIAL MASTERS

Pursuant to Commission Rule 121(b), as an alternative to hearing a case itself, the Commission requests the appointment of special masters – usually three – by the Supreme Court to preside over a hearing and take evidence in a formal proceeding. As further discussed on pages 7-9 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the Commission.

The Commission wishes to recognize the following judges for their service as special masters in Commission matters in 2006:

Judge Thang Nguyen Barrett
Santa Clara County Superior Court

Justice Desiree A. Bruce-Lyle
San Diego County Superior Court

Justice Tani G. Cantil-Sakauye

Court of Appeal, Third Appellate District

Justice Dennis A. Cornell

Court of Appeal, Fifth Appellate District

Judge Allan D. Hardcastle
Sonoma County Superior Court

Judge Mary Jo Levinger
Santa Clara County Superior Court

Judge William A. Mayhew
Stanislaus County Superior Court

Judge Kevin M. McCarthy
San Francisco County Superior Court

Justice Fred K. Morrison

Court of Appeal, Third Appellate District

Justice Eugene M. Premo

Court of Appeal, Sixth Appellate District

Judge Eleanor Provost

Tuolumne County Superior Court

Justice Laurence D. Rubin

Court of Appeal, Second Appellate District

Judge Mark H. Tansil
Sonoma County Superior Court

Justice Kathryn Doi Todd

Court of Appeal, Second Appellate District

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I. OVERVIEW OF THE COMPLAINT PROCESS



THE AUTHORITY OF THE COMMISSION ON IUDICIAL PERFORMANCE

The Commission on Iudicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges, and the Commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The Commission does not have authority over temporary judges (also called judges pro tem) or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

This section describes the Commission's handling and disposition of complaints involving judges. The rules and procedures for complaints involving commissioners and referees and statistics concerning those matters for 2006 are discussed in Section V, Subordinate Judicial Officers.

How Matters Are Brought Before the Commission

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other

ways, such as news articles or information received in the course of a Commission investigation.

JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1, section E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

WHAT THE COMMISSION CANNOT DO

The Commission is not an appellate court. The Commission cannot change a decision made by any judicial officer. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal to the appropriate reviewing court.

The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

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REVIEW AND INVESTIGATION OF COMPLAINTS

At Commission meetings, which occur approximately every seven weeks, the Commission decides upon the action to take with respect to each new complaint.

Many of the complaints considered by the Commission do not involve judicial misconduct. These cases are closed by the Commission after initial review.

When a complaint states facts which, if true and not otherwise explained, would be misconduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission will close the case without action against the judge and so notify the source. If, after an investigation and opportunity for comment by the judge,

the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may issue an advisory letter to the judge. In an advisory letter, the Commission

will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a private admonishment. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

Advisory letters and private admonishments are confidential. The Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 2006, not identifying the judge involved, is contained in Section IV, Case Summaries.

Public Dispositions

ACTION THE COMMISSION CAN TAKE

Close (Dismissal)

Advisory Letter

Private Admonishment

Public Admonishment Public Censure

In cases involving more serious misconduct, the Commission may issue a public admonish-

> ment or a public censure. This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of disci-

eral public.

In the most serious cases, the Commission

Removal or Involuntary Retirement pline. Both public admonishments and public censures are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the complainant, the press and the genmay determine – following a hearing – to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine – again, following a hearing – to involuntarily retire the judge from office. In cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any California state court.

A judge may petition the Supreme Court to review an admonishment, censure, removal or involuntary retirement determination.

CONFIDENTIALITY

Under the California Constitution and the Commission Rules, complaints to the Commission and Commission investigations are confidential. The Commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the Commission during an investigation are advised regarding the confidentiality requirements.

After the Commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



LEGAL AUTHORITY

Recent Changes in the Law

In 2006, the Code of Judicial Ethics was amended by the Supreme Court, as summarized below. Changes also were made to provisions in the California Government Code that affect the work of the Commission. No changes were made to the Commission's rules in 2006, however, on January 31, 2007, the Commission adopted interim changes to two rules and adopted a new rule on an interim basis.

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

The Commission on Judicial Performance was established by legislative constitutional amendment approved by the voters in 1960. The Commission's authority is set forth in article VI, sections 8, 18, 18.1 and 18.5 of the California Constitution. In 1966, 1976, 1988, 1994 and most recently in 1998, the Constitution was amended to change various aspects of the Commission's work.

The Commission also is subject to Government Code sections 68701 through 68756. Section 68756 was added in 2006, effective January 1, 2007, granting the Commission access to nonpublic records of court proceedings, relevant to the performance of any judge, former judge or subordinate judicial officer. This section also establishes restrictions on the use of such records and affords protections to affected persons.

The Government Code also governs the Commission's handling of disability retirement applications. The pertinent provisions are Gov-

ernment Code sections 75060 through 75064 and sections 75560 through 75564.

In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On January 31, 2007, the Commission adopted \$350.00 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are included in Appendix 1.

Commission Rules and Policy Declarations

Article VI, section 18(i) of the Constitution authorizes the Commission to make rules for conducting investigations and formal proceedings.

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996.

On January 31, 2007, the Commission adopted interim changes to rules 108(c) and 119.5. These rules govern extensions of time and the filing of papers with the Commission during formal proceedings. The Commission also adopted new rule 125.5 on an interim basis concerning the handling of the evidentiary record after a hearing. These rules and several additional proposed amendments and new rules were scheduled to be circulated for public comment in early 2007.

The Commission's Policy Declarations detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997. No changes were approved in 2006.

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On January 31, 2007, the Commission adopted a Code of Ethics for Commission Members (Policy Declarations 6.1-6.5).

The Commission Rules and Policy Declarations are included in Appendix 1, sections B and C, with the dates of adoption or approval and the dates of any amendments.

Rules of Court

As part of the reorganization of the California Rules of Court, the rules were renumbered, amended and adopted in 2006, to become effective January 1, 2007. None of the amendments made any substantive changes to the rules pertaining to the Commission.

Code of Iudicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996.

In 2006, the Supreme Court amended the Terminology section of the code to define "registered domestic partner" and added the term to several provisions. Canon 3(E) was amended concerning disqualification of an appellate court justice when the justice has been employed by or participated in discussions regarding prospective employment or service as a dispute resolution neutral. Provisions and Commentary were added to Canon 6(D) to clarify when a temporary judge is disqualified in a proceeding and when an individual may use the title of temporary judge or refer to service as a temporary judge.

The canons, as amended, are included in Appendix 1, section E.

COMMISSION PROCEDURES

Commission Review of Complaints

The Commission considers each written complaint about a California judge and determines whether sufficient facts exist to warrant investigation or whether the complaint is unfounded and should not be pursued. Until the Commission has authorized an investigation, the Commission's staff does not contact the judge or any court personnel. However, to assist the Commission in its initial review of the complaint, the Commission's legal staff will have researched any legal issues and may have obtained additional relevant information from the complainant or the complainant's attorney. [Commission Rule 109.]

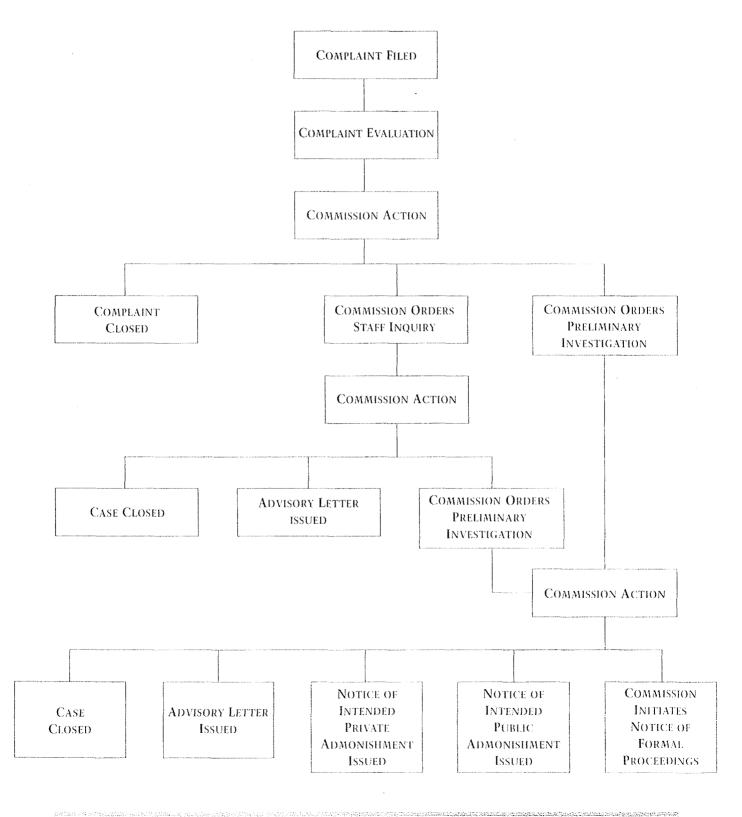
Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may commence with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

COMPLAINT PROCESS



Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission will close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of the misconduct. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission may also institute formal proceedings, as discussed below.

All notices of staff inquiry, preliminary investigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge,

when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to ensure that complaints before the Commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

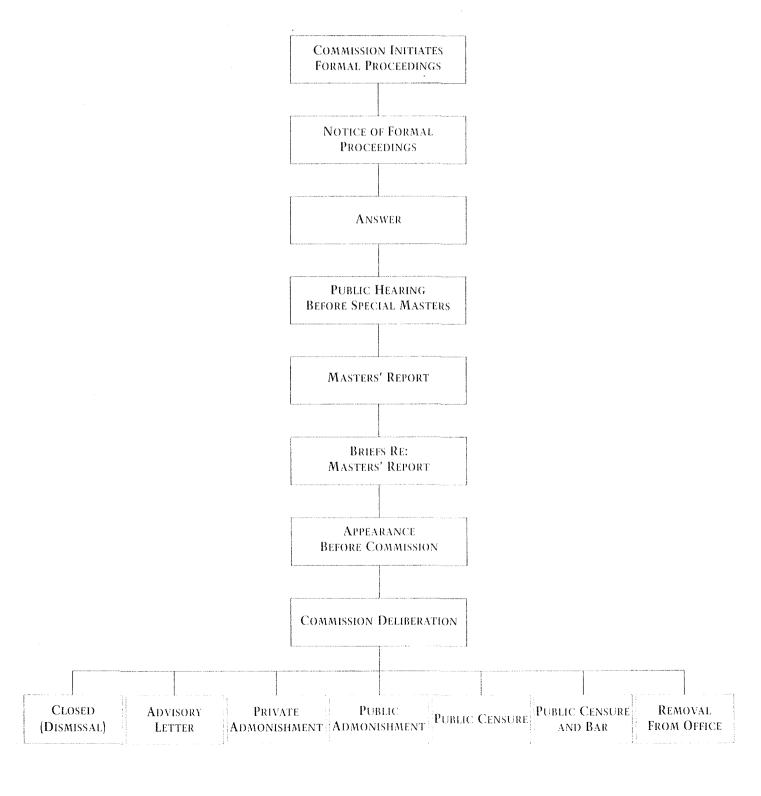
Monitoring

In the course of a preliminary investigation, the Commission may monitor the judge's conduct, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Commission Rule 112.)

Formal Proceedings

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may initiate formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are commenced, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b).) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

FORMAL PROCEEDINGS



The rules provide for discovery between the parties after formal proceedings are initiated. A judge receives discovery from the Commission when the notice of formal proceedings is served. (Commission Rule 122.)

The Commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

As in all phases of Commission proceedings, the judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission (see Section VII, Commission Organization and Staff). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Commission. The report includes a statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

Amicus curiae briefs may be considered by the Commission when it is demonstrated that the briefs would be helpful to the Commission in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

The following are actions that may be taken by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.
- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any California state court.

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. The Commission also re-

leases individual votes on public admonishments issued pursuant to Commission Rules 115 and 116.

SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent "de novo" review of the record. (California Constitution, article VI, section 18(d).) California Rules of Court 9.60 and 9.61 govern petitions for review of Commission determinations.

Selected Supreme Court cases involving judicial disciplinary proceedings are listed in Appendix 2.

STATUTE OF LIMITATIONS

Article VI, section 18(d) of the California Constitution provides that a judge may be censured or removed, or a former judge censured, only for action occurring not more than six years prior to the commencement of the judge's current term or a former judge's last term.

STANDARD OF PROOF

The standard of proof in Commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. [California Constitution, article VI,

section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. [Commission Rule 102(f) - (n); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; Ryan v. Commission on Judicial Performance (1988) 45 Cal.3d 518, 528.)

The Constitution permits the Commission to make explanatory statements during proceedings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

The Constitution provides that when formal proceedings are instituted, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules require the Commission to disclose to the person who filed the complaint that the Commission has found no basis for action against the judge or determined not to proceed further in the matter, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission also is required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

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III. 2006 STATISTICS ACTIVE AND FORMER JUDGES



COMPLAINTS RECEIVED AND INVESTIGATED

In 2006, there were 1,610 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges.

The Commission's jurisdiction also includes California's 460 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving the eight judges of the State Bar Court.

JUDICIAL POSITIONS As of December 31, 2006

Supreme Court7
Court of Appeal
Superior Courts
Total

New Complaints

In 2006, 1,019 new complaints about active and former California judges were considered by the Commission. The 1,019 complaints named a total of 1,331 judges (848 different judges). The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

2006 CASELOAD - JUDGES

Cases Pending 1/1/06 85
New Complaints Considered
Cases Concluded in 2006
Cases Pending 12/31/06 69
Discrepancies in totals are due to consolidated complaints and/or dispositions.

In 2006, the Commission received 129 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission considered three complaints about State Bar Court judges in 2006. After review, it was determined that none warranted further action.

The Commission office also received approximately 500 complaints in 2006 concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, judges pro tem (temporary judges), workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals

Staff Inquiries and Preliminary Investigations

In 2006, the Commission ordered 67 staff inquiries and 51 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2006

Staff Inquiries	67
Preliminary Investigations	51

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Formal Proceedings

At the beginning of 2006, there were five formal proceedings pending before the Commission. In one of these matters (Inquiry Concerning Judge Kevin A. Ross. No. 174l, the Commission issued a decision in 2005, but the time for the judge to file a petition for review with the Supreme Court had not expired by the end of 2005.1 The Commission instituted formal proceedings in five cases during 2006. In all of these cases the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 2006, six formal proceedings had been concluded and four formal proceedings remained pending before the Commission. In one of these matters (Inquiry Concerning Judge Diana R. Hall, No. 175], the Commission issued an order of removal from office in 2006, but the time for the judge to file a petition for review with the Supreme Court had not expired at the end of the year.²

-	FORMAL PROCEEDINGS	
	Pending 1/1/06	51
	Commenced in 2006	5
	Concluded in 2006	6
	Pending 12/31/06	42

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2006, regardless of when the complaints were received.³ In 2006, a total of 1,022⁴ cases were concluded by the Commission. The average

time period from the filing of a complaint to the disposition was 2.7 months. A chart of the disposition of all cases completed by the Commission in 2006 is included on page 13.

Type of Court Case Underlying Complaints Concluded in 2006

Criminal 46%
General Civil
Family Law
Small Claims/Traffic
All Others 10%
4% of the complaints did not arise out of court

4% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

Source of Complaints Concluded in 2006

Litigant/Family/Friend 87%
Attorney
Judge/Court Staff
All Other Complainants 4%
(including citizens)
Source Other Than Complaint
(includes anonymous letters,
news reports)

Closed Without Action

In 919 of the cases closed in 2006, there was not a sufficient showing of misconduct after the information necessary to evaluate the complaint was obtained and reviewed. In other words,

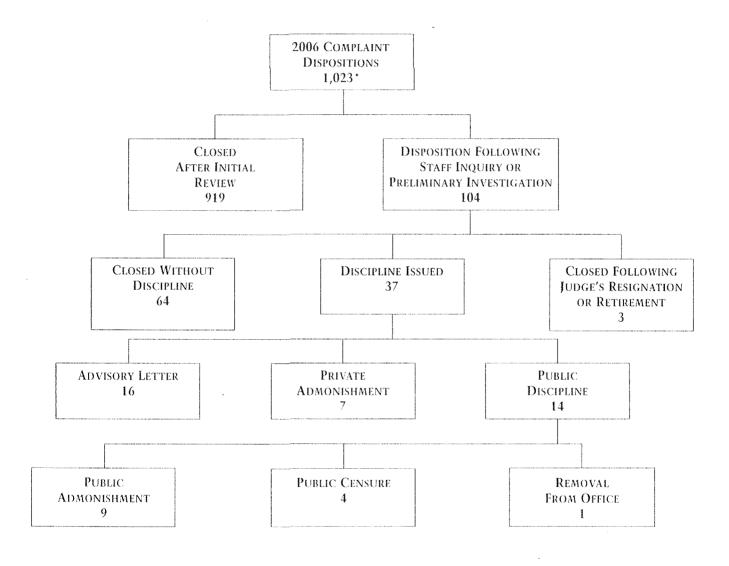
¹ Because the Ross matter was not final at the end of 2005, it was not included in the complaint disposition statistics for 2005. It is included in the 2006 statistics.

² The Hall matter is not included in the complaint disposition statistics for 2006.

³ Staff inquiries and preliminary investigations in the cases closed in 2006 may have commenced in prior years. Cases or portions of cases pending at the end of 2006 are not included in complaint disposition statistics.

¹ The total number of dispositions exceeds the total number of cases concluded because complaints involving multiple allegations of varying severity may be resolved with multiple dispositions. For example, some allegations in a case may warrant closure with an advisory letter while others in the same case warrant public discipline. These dispositions do not always occur within the same year - some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

2006 COMPLAINT DISPOSITIONS



^{*} See footnote 4 at page 12.

there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. These cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, another 64 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

Closed with Discipline

In 2006, the Commission publicly censured four judges and imposed nine public admonishments. The Commission also issued seven private admonishments and 16 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2006 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indi-

cate the number of times each type of conduct resulted in discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved in a single case, each different type of conduct was counted and assigned to an appropriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2006, the Commission closed three matters without discipline when the judge resigned or retired with an investigation pending.

TYPES OF CONDUCT RESULTING IN DISCIPLINE

DEMEANOR, DECORUM (includes inappropriate humor) [14]

FAILURE TO ENSURE RIGHTS
[8] -

BIAS OR APPEARANCE OF BIAS
(NOT DIRECTED TOWARD A
PARTICULAR CLASS)
(includes embroilment, preindigment,
favoritism)
[6]

Ex Parte Communications [6]

On-Bench Abuse of Authority in Performance of Judicial Duties [6] MISCELLANEOUS OFF-BENCH
CONDUCT
[6]

OFF-BENCH ABUSE
OF OFFICE
(includes improper use of
office stationery)

[5]

ABUSE OF CONTEMPT/SANCTIONS
[4]

DECISIONAL DELAY, TARDINESS, ATTENDANCE [4] DISQUALIFICATION,
DISCLOSURE AND
RELATED RETALIATION
[4]

Alcohol or Drug Related Criminal Conduct [2] BIAS OR APPEARANCE OF BIAS (TOWARD A PARTICULAR CLASS)
[2]

ADMINISTRATIVE MALFEASANCE

(includes conflicts between judges, fathure to supervise staff, delay in responding to complaints about commissioners)

[1]

IMPROPER POLITICAL ACTIVITY
[1]

COMMENT ON A PENDING CASE [1]

NON-SUBSTANCE ABUSE CRIMINAL CONDUCT [1] IMPROPER BUSINESS
ACTIVITIES
[1]

MISUSE OF COURT RESOURCES [1]

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^{*} See "Closed With Discipline" at page 14 of text.

IV. Case Summaries



PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2006 are summarized in this section. The full text of these decisions is available from the Commission office and on the Commission's Web site at http://cjp.ca.gov.

REMOVAL FROM OFFICE BY THE COMMISSION

In November of 2005, the Commission issued an order of removal of Judge Kevin A. Ross of the Los Angeles County Superior Court. In February 2006, Judge Ross filed a petition for review in the California Supreme Court which was denied in May 2006. Because the matter was not concluded at the end of 2005, it was not included in the 2005 statistics. It is included in the 2006 statistics.

In December of 2006, the Commission issued an order of removal of Judge Diana R. Hall of the Santa Barbara County Superior Court. The time for Judge Hall to file a petition for review in the California Supreme Court had not expired at the end of the year, and therefore, this matter is not included in the 2006 case disposition statistics.

XVX

Order of Removal of Judge Kevin A. Ross, November 16, 2005

Judge Kevin A. Ross of the Los Angeles County Superior Court was ordered removed from office by the Commission on November 16, 2005, for willful misconduct in office and conduct prejudicial to the administration of jus-

tice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. The judge filed a petition for review in the California Supreme Court in February 2006 and the petition was denied May 10, 2006.

The Commission first determined that the judge engaged in misconduct in connection with four criminal cases.

In one matter, a defendant who had two traffic citations submitted a declaration asserting that she was not the person cited. Judge Ross told her that he thought she was lying, added a misdemeanor charge of knowingly providing false insurance information in each traffic case, set bail at \$2,500 in each case, summarily remanded the defendant to custody, and set her next court date 30 days in the future; the defendant testified that the judge said she was going to custody for 30 days. The judge also entered a "not guilty" plea for the defendant, but did not arraign her and did not notify the prosecutor or the public defender that he had added the misdemeanor charge. The defendant remained in custody for two and a half days; she was then released after posting bail. In Commission proceedings, Judge Ross made a number of unconvincing excuses and false statements in an effort to mislead the special masters and the Commission.

The Commission concluded that Judge Ross engaged in willful misconduct. The judge's actions toward the defendant were in bad faith because he acted out of pique, irritation or im-

Page 16

patience; alternatively or additionally, the judge acted beyond his lawful authority, either with knowledge that his actions were beyond his authority or with conscious disregard for the limits of his authority. In addition, the Commission found that the judge's knowing disregard of fundamental rights and abuse of authority were part of a pattern that rendered the judge unfit for the bench.

In another matter, Judge Ross telephoned a defendant charged with misdemeanor drug offenses and had an exparte conversation with her. The Commission found that this was improper action. The Commission rejected the judge's claim that his call was justified by an emergency, and found that his claim that he promptly notified counsel of the call was false. The Commission found that Judge Ross made notes on a computer-generated printout of court minutes in an attempt to buttress his defense, and then used that altered document, first, to attempt to mislead his supervising judges and then to assert a false defense in Commission proceedings.

In a third matter, Judge Ross presided over the case of a defendant who had been placed on diversion on misdemeanor charges of violating zoning and other municipal ordinances in connection with holding religious services in his home. The prosecutor said that the defendant had not complied with the diversion agreement and that he wished to proceed with criminal charges. He also asked the judge to immediately enter an order prohibiting the defendant from holding religious services. Judge Ross informed the defendant of his right to legal representation, and the defendant said that he would need to seek legal representation. Despite this unambiguous request for counsel, Judge Ross asked the defendant a series of questions bearing on the requested order and the criminal charges, and accused the defendant of lying to him. The judge eventually obtained incriminating admissions from the defendant, after which he entered a notguilty plea for the defendant and told him that he needed to get a lawyer.

The Commission concluded that Judge Ross engaged in willful misconduct. The Commission determined that the judge intentionally violated the defendant's constitutional rights, and displayed manifest embroilment and lack of impartiality.

In a fourth case, Judge Ross refused to conduct a probation violation hearing, stating that he already had found the defendant in violation of probation and would proceed to sentencing. After the defendant's public defender had a heated exchange with the judge and was removed from the courtroom, the judge continued with the sentencing proceedings. Another public defender who was in the courtroom stated his appearance, but the Commission determined that neither he nor the judge understood him to have replaced the public defender who had been representing the defendant or to have been in a position to provide effective representation of the defendant. The judge addressed the defendant directly, and accused him of being a pathological liar. The matter was continued to the afternoon. The next day, after being told that the public defender's office intended to boycott his courtroom, Judge Ross set a formal probation violation hearing in the case.

The Commission concluded that Judge Ross committed willful misconduct. The judge presumptively knew, through his experience as a prosecutor, that a defendant in a probation violation case has a right to a hearing, and the defendant's lawyer insisted on that right. Therefore, the Commission concluded, Judge Ross intentionally disregarded the defendant's fundamental rights or knowingly acted beyond his judicial power or with a conscious disregard for the limits of his authority. Alternatively or additionally, the Commission determined that the judge displayed embroilment evidencing anger, pique, revenge or other improper purpose.

The Commission concluded that Judge Ross violated canon 3B(9) and engaged in prejudicial misconduct when he revealed confidential information about a juvenile case while appearing on a local public television program, and

when he discussed a pending appellate case during another appearance on the same show.

The Commission concluded that Judge Ross engaged in willful misconduct and violated canons 1, 2A, 2B(2), 4A(2), 4D(1)(a), and 4D(2) when he acted as a private arbitrator during filming of a pilot television program for a possible new series to be called Mobile Court. The Commission concluded that the judge committed willful misconduct when he served as an arbitrator because he was acting in a judicial capacity. The Commission rejected the judge's claim that he did not know he was acting as an arbitrator, noting that he had signed two documents entitled "Arbitrator's Award" after filming was complete. The Commission noted that the judge's patent attempts at avoidance of responsibility and his act of providing a false story that he had signed the arbitration awards before the filming demonstrated a serious lack of candor and accountability.

In deciding discipline, the Commission noted that Judge Ross had engaged in repeated wrongdoing, that he had displayed a pervasive lack of candor and accountability and that he previously had been disciplined for similar misconduct. The Commission pointed out that honesty is a "minimum qualification" expected of every judge, and that Judge Ross had fabricated stories and attempted to mislead the Commission. The Commission also noted that the judge's behavior suggested a strong likelihood of future violations, and that his conduct besmirched the reputation of the judiciary. The Commission concluded that the appropriate discipline was removal from office.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted in favor of all the findings and conclusions and the order of removal of Judge Ross. Commission member Ms. Patricia Miller was recused, and Commission member Mr. Lawrence Simi did not participate.

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Order of Removal of Judge Diana R. Hall, December 12, 2006

Judge Diana R. Hall of the Santa Barbara County Superior Court was ordered removed from office by the Commission on December 12, 2006, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that Judge Hall drove a car when impaired by alcohol and with a blood alcohol level of .18, more than twice the legal limit, resulting in convictions by a jury of driving under the influence and driving with a blood alcohol level over .08. The Commission adopted the special masters' conclusions that the judge's conduct was contrary to canons I and 2A, and that it reflected "a complete lack of concern for the safety of others" as well as "an inability to control her impulses and poor judgment, thereby seriously injuring the integrity of the judiciary in the eyes of the public." The Commission also adopted the special masters' conclusion that the judge engaged in prejudicial misconduct, since her conduct would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office.

The Commission also found that during her campaign for reelection, Judge Hall illegally commingled campaign and personal funds, and filed four sworn false campaign statements. The Commission found that the judge accepted \$20,000 for her campaign from a woman with whom she lived in a romantic relationship; the judge deposited these funds to her personal checking account and then wrote a check for \$25,000 to her campaign. Subsequently, the judge signed under penalty of perjury four campaign statements that did not include the

\$20,000 she had received, either as a loan or as a contribution; the statements falsely listed the judge as the sole source of the \$25,000 deposited to her campaign account.

The Commission found that the judge intentionally omitted the source of the \$20,000 from her campaign statements because she believed disclosure of her same-sex relationship would have made her job difficult in the area in which she was running for reelection. The Commission noted that although the judge had admitted in prior testimony at her DUI trial that this was the reason she omitted the \$20,000 from her sworn statements, she testified at the hearing before the masters that she "never really thought about" the possibility that listing the \$20,000 would result in disclosure of the relationship, and also testified that she considered the \$20,000 to be jointly earned and therefore not subject to disclosure. The Commission and the masters rejected these latter claims, finding that the judge intentionally omitted the source of the \$20,000 from her statements to avoid disclosure of her relationship.

The Commission concluded that Judge Hall violated various provisions of the Political Reform Act, rejecting her claim that she did not willfully violate the law because she was ignorant of its requirements at the time of the violations. The Commission concluded that by commingling funds, intentionally concealing the source of nearly half of her campaign contributions, and signing four declarations under penalty of perjury knowing they were false, the judge violated canons 1, 2A and 5, and engaged in prejudicial misconduct. The Commission concluded that Judge Hall's campaign misconduct was unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity, noting that "in this context, bad faith means a culpable mental state beyond mere negligence and consisting of either knowing or not caring that the conduct being undertaken is unjudicial and prejudicial to public esteem." (Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079, 1093.)

GEOGRAPH CONTROL SERVICES FOR A PRESENT OF CLASS WAS REPORTED AND DESCRIPTION OF THE PROPERTY OF THE PROPERTY

Finally the Commission found that Judge Hall questioned a prosecutor about why he was filing a peremptory challenge against her, and rejected her claim that she did not do so. The Commission noted that the judge admitted that she knew she could not question the prosecutor about the challenge. The Commission concluded that the judge violated canons I and 2A by her questioning and engaged in willful misconduct, noting that the judge's conduct was unjudicial, that she was acting in a judicial capacity, and that she committed an act she knew was beyond her judicial power, thus acting in bad faith. (See, *Broadman, supra*, 18 Cal.4th at p. 1091.)

The Commission determined that the special masters properly admitted into evidence a private admonishment that was in effect before the conclusion of the Commission proceeding, as allowed by Commission rule 125(b), and noted that the rule provides that prior discipline is admissible "to determine what action should be taken regarding discipline." The Commission rejected the judge's arguments that admitting the admonishment improperly made private discipline public, and that the Commission should only consider discipline for conduct predating the conduct considered in the formal proceedings. The Commission pointed out that Judge Hall had committed the misconduct underlying the admonishment when she knew she was under investigation by the Commission, and had thereby "shown her inability to control her behavior at a time one would expect her to be on her very best behavior."

The Commission then discussed the facts underlying the private admonishment. In that matter, Judge Hall insisted on being seated in the main courtroom, rather than an overflow courtroom, during arraignment and argument in a high-profile case, so that the prosecutor could see her "no worse off" than before he had prosecuted her for the DUI and other charges. She disobeyed the order of the judge presiding over the case not to enter the main courtroom, and refused to speak to the presiding judge by telephone.

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In considering the appropriate sanction, the Commission stated that the case required it to "decide whether a judge who engages in materially deceitful and lawless conduct that undermines the electoral process, and thereafter attempts to explain it away with specious arguments and misleading testimony should continue in judicial office." The Commission pointed out that honesty is a minimum qualification for every judge, and cited past cases from California and other states in which judges were removed primarily or specifically for dishonesty, including deceptive campaign conduct and subsequent dissembling before the Commission.

The Commission considered in mitigation the testimony of several witnesses who described Judge Hall as a hardworking, conscientious and well prepared jurist. Nonetheless, the Commission concluded that "the judge's election fraud overwhelms other considerations and compels [its] removal decision." The Commission stated that the judge engaged in deceit and misrepresentations to keep her position as a judge; dissembled before the masters and the Commission; demonstrated an extreme lack of judgment when she drove while drunk; questioned an attorney's disqualification of her when she knew this was improper; and showed "alarming disrespect" for the authority of the judge presiding over a high profile case, the presiding judge, and other court personnel when she insisted on taking a seat in the courtroom for proceedings in the case. The Commission noted that the judge's actions showed "the serious degree to which she is unable to control her behavior."

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted in favor of all the findings and conclusions and in the order of removal and disqualification. Commission member Ms. Patricia Miller did not participate in the matter.

PUBLIC CENSURE BY THE COMMISSION

In 2006, the Commission imposed four public censures. Two of the judges also were barred from receiving an assignment, appointment, or reference of work from any California state court.

X0X

Public Censure of Judge Elaine M. Rushing, June 8, 2006

Judge Elaine M. Rushing of the Sonoma County Superior Court was publicly censured on June 8, 2006, by stipulation, for prejudicial misconduct.

The factual stipulations established that Judge Rushing drove a car while under the influence of alcohol and with a blood alcohol leve! measured by breath tests at between .19 and .21; the judge was convicted on her plea of no contest of violating Vehicle Code section 23152(b) (driving with a blood alcohol level above .08) with an enhancement under Vehicle Code section 23578 (for a blood alcohol level of .20 or more). It was stipulated that this conduct violated canons I and 2A, and constituted prejudicial misconduct. It was also stipulated that Judge Rushing promptly reported her arrest to the Commission, as required by canon 3D(3), and that upon her conviction, the judge issued a public apology to the people of Sonoma County in a local newspaper.

In addition, it was stipulated that in an effort to avoid being arrested for crimes related to her drinking and driving, Judge Rushing engaged in a course of dishonest conduct. The judge left the scene of an accident in which she collided with a wall, causing property damage, without notifying law enforcement or the property owners; the judge, who sustained a minor head injury, drove for approximately two miles before driving her car into a ditch. The judge told a passerby who stopped to go away, and told another driver who stopped not to call anyone; the judge falsely told the second driver that her hus-

band was with her. When emergency personnel and the California Highway Patrol (CHP) arrived, Judge Rushing falsely told a firefighter and a CHP officer that she had not been driving, and falsely stated that she had been with two other people, one of whom had been driving. When asked by the CHP officer how much alcohol she had consumed, the judge first said "two bottles" and then said "two glasses"; when asked what she had been drinking, she again asserted that she had not been driving. The judge remained under the influence of alcohol during these events and through the time of her eventual arrest. It was stipulated that the judge's conduct violated canons 1 and 2A and constituted prejudicial misconduct.

It was further stipulated that Judge Rushing repeatedly invoked her judicial office and that of her husband, an appellate court justice, in an effort to avoid being arrested for crimes related to her drinking and driving and to otherwise receive preferential treatment. The judge identified herself to emergency personnel by showing a badge identifying her as a superior court judge; repeatedly told the CHP officer that she was a judge; and repeatedly asked the CHP officer to call her husband, whom she identified as an appellate court justice. After being handcuffed, the judge referred to her judicial position several times when asking that the handcuffs be removed; while being transported to a CHP office, she told the CHP officer that in her courtroom she goes against court policies for CHP and other officers, and that he should extend that courtesy to her. It was stipulated that Judge Rushing's conduct violated canons 1, 2A, and 2B(2), and constituted prejudicial misconduct.

In considering discipline, the Commission noted that there was no indication of any pattern of behavior similar to that contained in the stipulations, or of any lack of judicial temperament. Nonetheless, the Commission found that Judge Rushing's driving under the influence, the hit-and-run property damage incident, and the criminal conviction were "utterly irreconcilable with the minimum standards expected of a

judge." The Commission found "particularly egregious" the judge's conduct following her attempts to drive while drunk. The Commission noted that the judge's lying to citizens offering aid and to emergency personnel could not be reconciled with canon 1 or canon 2A, or with the standard that honesty is a "minimum qualification" expected of every judge. In addition, the Commission found "reprehensible" Judge Rushing's conduct in repeatedly invoking her judicial office and that of her husband in an effort to avoid arrest and otherwise receive preferential treatment. The Commission expressed its recognition that all of Judge Rushing's wrongdoing arose out of "one drunken lapse of judgment," but noted that this lapse was no more excusable than a similar mistake made by anyone else while under the influence.

The Commission pointed out that although the judge's veracity and integrity had been seriously impugned, her attempts to obtain preferential treatment were unsuccessful. The Commission noted that there was no on-bench misconduct, and no direct adverse effect on the administration of justice per se. In addition, the Commission noted that several people, primarily from the legal community, had submitted letters in support of the judge.

In assessing whether Judge Rushing was likely to commit future misconduct, the Commission stated that it had taken into consideration the judge's assurance that she had modified her behavior to ensure that she would not re-offend, as well as the fact that she had no prior discipline by the Commission during more than 14 years on the bench. In addition, the Commission considered the judge's prompt acknowledgment of the serious nature of her wrongdoing, and her expressions of remorse. Finally, the Commission noted that Judge Rushing had stipulated to the imposition of serious discipline. The Commission concluded that censure was the appropriate sanction.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones

Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted to accept the parties' settlement proposal and to issue the decision and order imposing a public censure pursuant to the stipulated agreement. Commission members Mr. Michael A. Kahn and Mr. Jose C. Miramontes voted to reject the proposed settlement, and dissented from the decision and order imposing public censure, on the ground that the public interest would be better served if the matter were decided after the development of a full factual record following a hearing before special masters. Commission member Justice Judith D. McConnell was recused, and Commission member Mrs. Crystal Lui did not participate in the matter.

20X

Public Censure of Judge Bernard J. Schwartz, June 8, 2006

Judge Bernard J. Schwartz of the Riverside County Superior Court was publicly censured on June 8, 2006, by stipulation, for prejudicial misconduct.

The stipulated facts established that Judge Schwartz drove a car while under the influence of alcohol and with a blood alcohol level measured by breath tests at between .17 and .18; the judge was convicted on his plea of no contest of violating Vehicle Code section 23152(b) (driving with a blood alcohol level above .08). It was stipulated that this conduct violated canons 1 and 2A, and constituted prejudicial misconduct.

It was further stipulated that before and after his arrest, Judge Schwartz repeatedly attempted to avoid being arrested and incarcerated and otherwise to receive preferential treatment because he was a judge. The judge referred to his judicial position numerous times, stressed the potential ill effects of a DUI on his career, and asked to be taken to the nearby hotel where he was staying instead of being arrested. After being arrested and taken to the police station, the judge asked the sergeant who had arrested

him to let him speak to a lieutenant or captain, and asked the sergeant to telephone the "on-call judge" to see if he could be released. When his attempts to obtain preferential treatment failed, Judge Schwartz complained that there was no "professional courtesy here anymore," said, "this is bullshit," and mentioned that the police officers "come in and appear before me" in court on certain matters. It was stipulated that Judge Schwartz's conduct violated canons 1, 2A, and 2B[2], and constituted prejudicial misconduct.

It was further stipulated that Judge Schwartz promptly reported his arrest to the Commission, as required by canon 3D(3), and that he had no record of prior discipline.

In considering discipline, the Commission stated that Judge Schwartz's driving under the influence and resulting criminal conviction were "utterly irreconcilable with minimum standards expected of a judge," and that his attempts to invoke the prestige of office to obtain preferential treatment were "reprehensible." The Commission expressed its recognition that all of Judge Schwartz's wrongdoing arose out of "one drunken lapse of judgment," but noted that this lapse was no more excusable than a similar mistake made by anyone else while under the influence.

In assessing whether Judge Schwartz was likely to commit future misconduct, the Commission took into consideration the judge's assurance that the behavior in question was aberrational, the fact that the judge had no prior history of any alcohol-related offenses or misconduct and no prior Commission discipline, and the fact that the judge promptly self-reported his arrest to the Commission. In addition, the Commission considered the judge's acknowledgment of the serious nature of his wrongdoing and his expressions of remorse. Finally, the Commission noted that the judge had stipulated to the imposition of serious discipline. The Commission concluded that censure was the appropriate sanction.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Justice

Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted to accept the parties' settlement proposal and to issue this decision and order imposing a public censure pursuant to the stipulated agreement. Commission members Mr. Michael A. Kahn and Mrs. Crystal Lui did not participate in the matter.

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Public Censure and Bar of Former Judge Ronald C. Kline, June 15, 2006

Judge Ronald C. Kline, formerly a judge of the Orange County Superior Court, was ordered publicly censured and barred from any assignment, appointment or reference of work from any California state court on June 15, 2006, by stipulation, following his conviction on a guilty plea on December 15, 2005, of four federal felony counts of possession of child pornography. The pornography had been seized pursuant to a search warrant in 2001. Judge Kline had been out of judicial office since his final term expired at the end of 2002.

The Commission cited article VI, section 18, subdivision (c) of the California Constitution, which provides that when an active judge is convicted of a felony under California or federal law and the conviction becomes final, the Commission "shall remove the judge from office." Under subdivision (e), a judge removed by the Commission is "ineligible for judicial office, including receiving an assignment, appointment, or reference of work from any California state court, and pending further order of the court, is suspended from practicing law in this State." The Commission noted that as to a former judge, pursuant to article VI, section 18, subdivision (d), the maximum sanction the Commission may impose, based on a felony conviction, is the imposition of a censure and a bar from receiving an assignment, appointment, or reference of work from any California state court. The Commission noted that Judge Kline had agreed further that the Commission could refer the matter to the State Bar of California.

Commission members Mr. Marshall B. Grossman, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted to accept the parties' settlement proposal to issue the decision and order imposing a censure and bar pursuant to the stipulated agreement. Commission member Judge Frederick P. Horn was recused, and Commission members Mr. Michael A. Kahn and Mrs. Crystal Lui did not participate in the matter.

XVX

Public Censure and Bar of Former Judge Susanne S. Shaw, December 21, 2006

Judge Susanne S. Shaw, formerly a judge of the Orange County Superior Court, was ordered publicly censured and barred from any assignment, appointment or reference of work from any California state court on December 21, 2006, by stipulation, for prejudicial misconduct. The judge stipulated to the factual allegations contained in a Notice of Formal Proceedings concerning her handling of five criminal cases in 2003 and 2004, prior to her retirement in September 2006. The Commission noted that as to a former judge, censure and bar appears to be the maximum sanction the Commission may impose, pursuant to article VI, section 18(d) of the California Constitution.

The stipulated facts established that in five criminal cases in 2003 and 2004, Judge Shaw treated individuals who appeared before her in a rude and demeaning manner, in violation of canons 1, 2A, and 3B(4). She berated, scolded, and belittled attorneys, litigants, witnesses and a prospective juror. In two of the cases, she improperly suggested that the defendant's testimony was untruthful, reflecting prejudgment and a lack of impartiality, contrary to canon 3B(5). Judge Shaw's abusive conduct drew harsh

criticism from the Court of Appeal in decisions arising out of three of the cases; in one appeal, the defendant's conviction was reversed partly as a result of the "atmosphere of unfairness" created by the judge's "caustic, condescending" remarks to the defendant and his counsel. [People v. Urias (July 31, 2006, G035179 [2006 WL 2128631] [nonpub. opn.]].)

In determining discipline in the current matter, the Commission considered Judge Shaw's record of prior discipline. The judge received an advisory letter in 1988 for conduct that included making inappropriate remarks to defendants, and drawing a picture of a hanged man and having her bailiff deliver it to the investigating officer during a preliminary hearing. In 1989, in a second advisory letter, she was reminded of a judge's duty to be patient, dignified and courteous to those with whom the judge deals in an official capacity. In 2000, Judge Shaw was publicly admonished for conduct that included making inappropriate remarks to a defendant and to a prosecutor.

The Commission found that the stipulated facts in the current matter showed a "persistent pattern of abusive and demeaning conduct that is seriously at odds with the canons and expected judicial temperament," and that neither prior discipline by the Commission nor repeated admonishment from the Court of Appeal had caused the judge to reform her intemperate judicial demeanor. The Commission noted that the adverse impact of the judge's misconduct on the judicial system had been substantial, jeopardizing the parties' right to a fair trial and, in one case, contributing to the reversal of a criminal conviction. Based on Judge Shaw's "persistent mistreatment" of those appearing before her and her inability to control her behavior despite repeated admonishments from the Commission and the Court of Appeal, the Commission determined that there was a "high probability" she would continue her unethical behavior if she were to sit in a judicial capacity in the future. The Commission therefore concluded that a public censure and bar were necessary for the

protection of the public and the reputation of the judiciary.

Commission members Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Mirmontes, Mrs. Penny Perez, Judge Risë Jones Pichon and Ms. Barbara Schraeger voted to accept the parties' settlement and-to issue the decision and order imposing a censure and bar pursuant to the stipulated agreement. Commission member Judge Frederick P. Horn was recused, and Commission member Mr. Lawrence Simi did not participate in the matter.

PUBLIC ADMONISHMENT BY THE COMMISSION

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments are issued in cases when the improper action or dereliction of duty is more serious than conduct warranting a private admonishment. In 2006, nine public admonishments were issued.

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Public Admonishment of Judge Ruffo Espinosa, Jr., February 9, 2006

Judge Ruffo Espinosa, Jr., of the Los Angeles County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that the judge denied the defendant in a criminal case full opportunity to be heard through counsel regarding sentencing, treated defense counsel in a rude and impatient manner, and abused the contempt power by holding in contempt and immediately incarcerating counsel who had sought to be heard on his client's behalf. The superior court granted a petition for writ of habeas corpus annulling the contempt order, finding a lack of substantial evidence to support it. The Court

of Appeal vacated the defendant's sentence and remanded the matter for resentencing before a different judge, finding that Judge Espinosa precluded defense counsel from completing his argument and refused to listen during an earlier portion of that argument. The appellate court also found that the judge failed to grant the attorney a stay before taking him into custody for contempt, as required by law, mischaracterized the record of proceedings leading to the contempt order at a subsequent hearing, and made material omissions and misstatements in a written contempt order. Based on these findings, the appellate court held that there was a doubt that the judge could maintain his objectivity, and that the case must be remanded for resentencing before a different judge.

The Commission determined that Judge Espinosa's conduct was contrary to canons 2A, 3B(2), 3B(4), 3B(5) and 3B(7).

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted to impose a public admonishment.

202

Public Admonishment of Judge John M. Watson, February 21, 2006

Judge John M. Watson, of the Orange County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Watson used court staff, court resources and court facilities for his personal real estate business. Over a four-year period, the judge sought and received help from his courtroom clerk with the management of two rental properties he owned. The judge instructed tenants to call him at the courtroom number, and used his clerk as the contact

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person for tenants. The clerk received and returned calls from tenants, made calls to businesses and a public agency, and occasionally exchanged faxes with the realtors leasing one of the properties. Judge Watson had his clerk prepare approximately 40 letters and legal notices in connection with the business. On a few occasions, the judge had his clerk and bailiff accept rental payments in the courtroom, and had courtroom staff provide receipts to tenants. The bailiff also received occasional calls from tenants.

Over a four-year-period, Judge Watson's chambers letterhead was used in connection with the real estate business on four occasions, including three letters or notes to tenants (one under the clerk's name) and one letter to a public agency signed by the judge with his judicial title. Chambers and court envelopes were used in connection with the business on eight occasions.

The Commission pointed out that a judge may not use his or her office or staff, or public property and/or resources under the judge's control for personal, non-governmental purposes. The Commission noted that this prohibition necessarily applies with greater force with respect to a judge's business activities undertaken for personal financial gain. The Commission concluded that Judge Watson's use of court staff, resources and facilities for his personal real estate business was contrary to canons 1, 2A, 2B(2), and 2B(4).

Commission members Mr. Marshall Grossman, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger, and Mr. Lawrence Simi voted to impose a public admonishment. Commission member Judge Frederick P. Horn was recused, and Commission members Mr. Michael A. Kahn and Mr. Jose C. Miramontes did not participate.

XXX

Public Admonishment of Judge Ronald J. Maciel, May 9, 2006

Judge Ronald J. Maciel, of the Kings County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Maciel abused his authority in sanctioning an attorney without prior notice or opportunity to be heard. The judge sanctioned the attorney for failure to give the required notice of a motion to continue a preliminary hearing; the sanctioned attorney had sent another attorney in his place, who requested a continuance on the date set for the preliminary hearing. The appellate department of the superior court vacated the sanctions. The Commission determined that by imposing sanctions on the absent attorney without prior notice and an opportunity to be heard, Judge Maciel violated canons 2A, 3B(2) and 3B(7).

The Commission also disapproved Judge Maciel's statement to the attorney who appeared on the date set for preliminary hearing that his firm's telling him to prepare for a preliminary hearing the evening before was "the direction of malpractice at a minimum." The Commission stated that gratuitous remarks about malpractice made to an attorney in open court in the presence of the attorney's client are contrary to canon 3B(4).

In determining that public admonishment was appropriate, the Commission noted that Judge Maciel had been the subject of prior discipline. The judge had received an advisory letter in 1995 for, as presiding judge, ordering a colleague to request in writing his permission to recuse in a case; a public admonishment in 1997 for engaging in ex parte communications with an attorney he had appointed to represent a defendant in a criminal case and to whom he was giving advice on how to handle the case; an advisory letter in 1999 for not following procedural

requirements when he terminated a father's visitation rights without notice or a hearing; and an advisory letter in 2001 for commenting to the press about a litigant's peremptory challenge of him while the case was still pending.

Commission members Mr. Marshall Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McGonnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger, and Mr. Lawrence Simi voted to impose a public admonishment. Commission member Mr. Jose C. Miramontes did not participate.

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Public Admonishment of Judge Bruce Clayton Mills, June 12, 2006

Judge Bruce Clayton Mills, of the Contra Costa County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Mills engaged in and took action upon a series of improper ex parte communications regarding a criminal case, in violation of canons 3B(7) and 2A. After the defendant in the case entered a plea of no contest on the day set for trial, Judge Mills discussed with the defendant—in the absence of prosecutors who had been present when the plea was entered and of the defendant's attorney-the possibility of diversion, meaning that the criminal charges against her would be suspended while she fulfilled certain conditions and then dismissed. When the defendant's attorney returned, the judge discussed the case with the attorney; the judge then summoned a probation officer and discussed the case with the attorney and the probation officer. The judge then allowed the defendant to withdraw her plea and granted diversion. When the district attorney's office learned what had occurred, an attorney in that office contacted the judge and discussed the case with him. As a result, Judge Mills terminated diversion and reinstated criminal proceedings against the defendant, who by then had fulfilled many of the conditions of diversion.

The Commission rejected the judge's argument that discipline could not be imposed for this matter because the alleged misconduct occurred in 1997; the judge assumed that the complaint had been filed in 2001. The Commission pointed out that the proceedings before it represented the consolidation of seven separate complaints filed between 2003 and 2005, and stated that the Commission consolidates multiple open and pending complaints against a judge for reasons that include the need to ascertain whether there are patterns of behavior, and in order to assess the aggregate magnitude and severity of possible wrongdoing.

In another criminal case, the Commission found that Judge Mills assumed the role of prosecutor and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter. Judge Mills made statements expressing his view that the case should have been filed as a felony rather than a misdemeanor; he said that he was "stunned" and "appalled" that it had not been filed as a felony. The Commission concluded that the judge's conduct was contrary to canons 1 and 2A, noting that the authority to charge criminal cases is outside the judicial power and that the court must not undertake the role of prosecutor or defense counsel if public confidence in the integrity of the criminal justice system is to be maintained.

The Commission found that in five additional criminal cases, Judge Mills engaged in a pattern of conduct that included making sarcastic, demeaning and belittling comments to attorneys and litigants appearing before him, and referring to "malpractice" when admonishing attorneys while their clients were present. The Commission concluded that this conduct was inconsistent with canon 3B(4).

In determining that public admonishment was the appropriate sanction, the Commission noted that Judge Mills received a private admonishment in 2001 for ignoring a defendant's request for counsel and attempting to coerce him to enter a guilty plea.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez and Ms. Barbara Schraeger voted for a public admonishment. Commission members Judge Risë Jones Pichon and Mr. Lawrence Simi voted for a private admonishment that would not base any discipline on the first matter discussed above because of the passage of time since Judge Mills presided over that case. Commission members Mr. Michael A. Kahn and Mrs. Crystal Lui did not participate.

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Public Admonishment of Judge Joseph E. Di Loreto, June 13, 2006

Judge Di Loreto was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Di Loreto wrote a letter on chambers judicial stationery to a city planner, pertaining to a matter in which a code enforcement action had been brought concerning the judge's storage of trailers and motor vehicles on a vacant lot he owned. In the letter, the judge sought an extension of time within which to remove a trailer and, implicitly, the forbearance of legal action. The judge's letter, on "chambers" judicial stationery, with "The Superior Court" printed at the top, and with the court's address and official seal, expressly identified Judge Di Loreto as a judge; the letterhead bore the inscription "Joseph E. Di Loreto, Judge."

The Commission noted that Judge Di Loreto received an advisory letter in 2001 for the use of

identical chambers judicial stationery in a personal dispute over ownership of a racing car. In that advisory letter, the Commission pointed out that the judge's use of the stationery in that context was contrary to canons 2B(2) and 2B(4).

In the current matter, the Commission determined that the judge's use of chambers judicial stationery again violated canons 2B(2) and 2B(4). The Commission noted that the fact that the printed judicial letterhead included a parenthetical "personal" was irrelevant, given that the court stationery was being used in the judge's personal dispute with a governmental agency regarding his own property. The Commission noted that letters such as the one written by Judge Di Loreto regarding official governmental business typically are included in an official record that may be reviewed by other government employees and officials, and may be used as evidence in subsequent legal proceedings.

The Commission also noted that the propriety of using judicial stationery in personal disputes does not turn on whether or not the recipient already knows that the author is a judge. Rather, the use of judicial stationery is prohibited under the canons because, in such circumstances, its use involves lending the prestige of office or the judicial title to advance personal or pecuniary interests. The Commission noted that in the matter before it, Judge Di Loreto advanced the argument that his use of judicial stationery was appropriate because the recipient knew he was a judge, despite the fact that the same argument was made by him and rejected by the Commission in the 2001 matter.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted for a public admonishment. Commission member Mrs. Crystal Lui did not participate.

Public Admonishment of Judge Paul E. Zellerbach, August 15, 2006

Judge Paul E. Zellerbach, of the Riverside County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

Judge Zellerbach delayed taking a verdict in a double homicide case because he was at a baseball game some distance from the court. Judge Zellerbach went to the baseball game while the jury was deliberating, after arranging for another judge to answer any questions the jury might have, but without arranging for that judge or any other judge to take the verdict. When the jury reached a verdict and Judge Zellerbach could not be reached by telephone, the judge's clerk contacted another judge, who was available to take the verdict; the clerk notified counsel to be present in an hour, to allow them sufficient time to have the defendant's and victims' families present for the verdict. Judge Zellerbach then spoke to the clerk by telephone, and told her to have the attorneys return the next day. Even when the attorneys advised the judge, through the clerk, of their wish to have the verdict taken that day, he refused to allow the other judge who was available to take the verdict, and did not return from the game to take the verdict himself. Judge Zellerbach took the verdict the following day.

The Commission concluded that Judge Zellerbach's conduct was contrary to canons 3A, 3B(8), and 2A. The Commission noted that this was a serious dereliction of judicial duty, by which the judge jeopardized the verdict in a double homicide case and imposed hardship and additional stress on jurors, on the families of the victim and the defendant, and on counsel and the defendant.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Justice Judith

D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, and Ms. Barbara Schraeger voted for a public admonishment. Commission members Mrs. Crystal Lui, Mrs. Penny Perez, Judge Risë Jones Pichon, and Mr. Lawrence Simi voted for a private admonishment. Commission member Mr. Michael A. Kahn did not participate.

XXX

Public Admonishment of Judge Pamela L. Iles, August 16, 2006

Judge Pamela L. Iles, of the Orange County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Iles took a probationer into custody without notice or the opportunity to respond to charges, denied bail, and scheduled the matter for an arraignment hearing nearly a month later. The Court of Appeal, in granting a petition for writ of habeas corpus, found that the judge's actions constituted a de facto revocation of probation without satisfying any of the due process requirements demanded upon such revocation. The Commission concluded that Judge Iles's actions clearly and convincingly reflected a disregard for the probationer's fundamental rights, and violated canons 2A and 3B(2).

In determining that public admonishment was appropriate, the Commission noted that Judge Iles had been the subject of prior discipline. This included an advisory letter issued in 1988 for failing to strictly abide by statutory requirements in imposing sanctions on a litigant; an advisory letter issued in 1997 for handling a domestic violence case in a manner giving rise to the appearance of embroilment and abandonment of the judge's role as a neutral judicial official; and a private admonishment issued in 2004 for displaying embroilment and partiality in a criminal case and creating the appearance

of seeking to use the judicial office to advance the judge's personal interest in achieving a particular outcome. The Commission pointed out that in the 2004 private admonishment, it noted "with great concern that this is the third occasion on which the judge's inappropriate conduct has warranted commission action."

Commission members Mr. Marshall B. Grossman, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, and Mr. Lawrence Simi voted for a public admonishment. Commission members Mrs. Crystal Lui, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted for a private admonishment. Commission member Judge Frederick P. Horn was recused, and Commission member Mr. Michael A. Kahn did not participate.

303

Public Admonishment of Judge Stephen E. Benson, November 15, 2006

Judge Stephen E. Benson of the Butte County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action; pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that when he was an attorney running in a general election for judicial office, Judge Benson received a \$71,000 loan to his campaign from his father, and failed to disclose the loan on campaign statements. He deposited the loan in his personal bank account, and subsequently dispersed the loan in two increments to his campaign account, listing himself on the campaign statements as the source of the funds. Judge Benson violated the Political Reform Act by failing to disclose the loan, and by improperly reporting the amount and source of the loan. Judge Benson was fined for these violations by the Fair Political Practices Commission (FPPC), which later referred the matter to the Commission on Judicial Performance. In deciding to impose less than the maximum fine on Judge Benson, the FPPC found that the judge was not trying to conceal that his father was a campaign contributor because the judge had disclosed his father as the source of a smaller loan to his campaign in the primary election.

In its admonishment, the Commission pointed out that when Judge Benson appeared before the Commission to contest the proposed discipline, he repeatedly stated that he did not dispute any of the factual allegations as to his violations of the Political Reform Act. The Commission noted that during the appearance, the judge could not explain why he had disclosed a smaller loan from his father during the primary election, but had not disclosed a larger loan in the general election.

The Commission found that Judge Benson undermined a basic purpose of the Political Reform Act—to fully and truthfully disclose receipts and expenditures in campaigns so that the voters may be fully informed and improper practices inhibited—by failing to disclose that his father in large part financed his campaign. The Commission noted that his father's \$71,000 loan represented over 40 percent of the total contributions received by Judge Benson during the reporting period. The Commission concluded that the judge's failure to obey the requirements of the Political Reform Act was contrary to canons 3B(2) and 2A, and constituted, at a minimum, improper action.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mrs. Crystal Lui, Justice Judith D. McConnell, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger and Mr. Lawrence Simi voted for a public admonishment. Commission members Mr. Michael A. Kahn and Ms. Patricia Miller did not participate.

202

Public Admonishment of Judge James M. Brooks, November 29, 2006

Judge James M. Brooks of the Orange County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Brooks made comments to litigants in a civil case that were sarcastic, demeaning and intimidating. When a litigant reported that he had suffered pressure in his chest requiring hospitalization on the day before his scheduled deposition, the judge responded, "Gee, I wonder what's going to happen when we put you in jail....Your little ticker might stop, you think?" When ordering the litigant's wife and co-defendant to appear for a deposition, the judge threatened to impose \$10,000 in sanctions if she did not appear, and added, "I'd mention jail but it might give her a heart attack." The Commission found that the statements were in violation of canon 3B(4). In addition, the Commission pointed out that the Court of Appeal determined that Judge Brooks's threat to impose sanctions was improper; the Commission concluded that the threat of sanctions was contrary to canons 2A and 3B(7).

The Commission found that in another civil case, the judge made statements in court and in a written supplement to a ruling to the effect that a woman to whom certain property had been transferred "in her native Syria (?) probably wouldn't be allowed to own property," and probably "[didn't] know how much she owns." The Commission determined that these comments were contrary to canons 3B(5), 2A, and 3B(4).

In determining that public admonishment was appropriate, the Commission noted that Judge Brooks had been previously disciplined for similar conduct. The judge had received advisory letters in 1996 and 1999 and a private admonishment in 2003 for making improper comments, including remarks reflecting improper demeanor and ethnic and other bias.

Commission members Mr. Marshall B. Grossman, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, and Mr. Lawrence Simi voted to impose a public admon-

ishment. Commission members Mr. Michael A. Kahn and Mr. Jose C. Miramontes concurred with the imposition of a public admonishment. Commission member Judge Frederick P. Horn was recused, and Commission member Ms. Barbara Schraeger did not participate.

PRIVATE DISCIPLINE

Private admonishments and advisory letters are summarized in this section. In order to maintain confidentiality, it has been necessary to omit certain details and obscure others, making these summaries less informative than they otherwise would be. Because these examples are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form than to omit them altogether.

PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

A private admonishment also may be used to elevate discipline in subsequent proceedings. This is particularly true in cases where the judge repeats the conduct that was the subject of the earlier discipline.

In 2006, the Commission imposed seven private admonishments.

- 1. To expedite the calendar, a judge routinely refused to consider own recognizance release of defendants at arraignment in misdemeanor cases, telling defendants not to even ask for one. During the commission's investigation, the judge ceased that practice. The judge displayed anger and bias and engaged in ex parte communications in a case. The judge then recused, but thereafter communicated with the newly assigned judge and one of the counsel.
- 2. A judge's off-bench activities with law enforcement over a period of time might have cre-

- ated the impression that the judge had assumed a law-enforcement role and cast doubt on the judge's capacity to act impartially.
- 3. A judge was irritated at an attorney's insistence on setting separately a minor case the judge thought should trail a more serious case and dismissed or threatened to dismiss the minor case. When the attorney appealed, the judge contacted the attorney ex parte to discuss the appeal.
- **4.** A judge continued issuing orders finding a waiver of a fundamental right despite an unambiguous Court of Appeal decision, in a prior case presided over by the judge, which prohibited such a waiver.
- 5. A judge's e-mail to other judges gave the appearance of ethnic bias in the discharge of administrative responsibilities.
- **6.** A judge had lunch during trial with a juror in the case.
- 7. A judge berated an attorney in front of the attorney's client, opposing counsel and others in the courtroom, and detained the attorney in the courtroom in excess of the judge's authority. In another matter, after being disqualified from the case, the judge reassigned the case to another judge, an action a disqualified judge is not permitted to take.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. As noted by the California Supreme Court in Oberholzer v. Commission on Iudicial Performance (1999) 20 Cal.4th 371: "Advisory letters may range from a mild suggestion to a severe rebuke." (Id. at p. 393.) An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate

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In 2006, the Commission issued 16 advisory letters.

Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Canon 3B(3), (4).)

- 1. A judge used profanity and vulgar language in two cases. The judge expressed contrition and gave assurances that the conduct would not be repeated.
- 2. At sentencing, a judge made gratuitous remarks disparaging the criminal justice system in other jurisdictions. The remarks were likely to undermine public confidence in the judiciary, prosecutors and law enforcement.
- 3. In an angry outburst during court proceedings, a judge expressed frustration with the judicial system and made rude and undignified remarks to a proper family law litigant.
- **4.** A judge chastised the attorneys in the presence of the jury and threatened to declare a mistrial over momentary confusion about the availability of a witness.
- 5. During trial, a judge made numerous sarcastic and demeaning remarks to counsel in the presence of the jury.

Delay, Dereliction of Duty

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.) The Commission issued advisory letters for failure to decide cases timely. The delay in these cases was over 90 days. Under California Constitution article VI, section 19, a judge may not receive the salary for judicial office while any submitted matters remain pending and undecided for more than 90 days.

- 6. A judge contributed to excessive delay in a habeas matter by ordering 16 extensions of time for filing the return, over a three-year period. Extensions were requested informally by petitioner's assigned counsel; the judge's orders contained no statement of good cause as required. The judge also failed to take action regarding petitioner's claim that petitioner had been abandoned by counsel.
- 7. A judge failed to issue a decision on a custody issue in a family law case for 112 days after telling the parties a decision would be issued within 10 days.
- **8.** A judge did not decide a motion for child support for almost seven and one half months, and did not decide a request for attorneys' fees in the same case for almost a year.

Disclosure and Disqualification

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them. (Canon 3E.)

- **9.** A judge's disclosure of information relevant to the question of disqualification was not made on the record, as required by canon 3E(1) of the Code of Judicial Ethics.
- **10.** A supervising judge signed an order in a case to which the judge was not assigned, at the request of a judicial officer, knowing that the judicial officer was recused from the case.

Ex Parte Communications

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

- 11. A judge engaged in an improper ex parte communication about a trial over which the judge was presiding.
- 12. A judge received information ex parte from one party's attorney and, without notice to the other parties, took action in the case based on that information.

Failure to Ensure Rights

Society's commitment to institutional justice requires that judges be solicitous of the rights of persons who come before the court. (See *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.)

- 13. A judge questioned defense counsel in a criminal matter about the attorney's qualifications and competence. The questioning, some of which was demeaning, was done in open court, in front of the defendant and over the objection of defense counsel.
- **14.** At arraignment, a judge waived a defendant's right to a speedy trial. The judge gave assurances that the conduct would not be repeated.

Off-Bench Improprieties

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both

the professional and personal conduct of a judge. [Canon 2A and Commentary.]

15. A judge's off-bench conduct might have created the impression that the judge had assumed a law enforcement role, and cast doubt on the judge's capacity to act impartially. The judge expressed contrition.

On-Bench Abuse of Authority

Acts in excess of judicial authority may constitute misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. [See Gonzalez v. Commission on Judicial Performance (1983) 33 Cal.3d 359, 371, 374; Cannon v. Commission on Judicial Qualifications (1975) 14 Cal.3d 678, 694.]

16. On multiple occasions, a judge spoke directly to defendants in Spanish—often on matters of substance and even when interpreters were present—in violation of Code of Civil Procedure section 185(a), which requires all judicial proceedings to be conducted in English.

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V. SUBORDINATE JUDICIAL OFFICERS



Since June of 1998, the Commission has shared authority with local courts over the discipline of "subordinate judicial officers" — attorneys employed by California's state courts to serve as court commissioners and referees. In 2006, there were 460 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2006

Court Commissioners	406
Court Referees	54
Total	460

COMMISSION PROCEDURES

The constitutional provisions governing the Commission's role in the oversight and discipline of court commissioners and referees expressly provide that the Commission's jurisdiction is discretionary. Each local court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the Commission's constitutional jurisdiction. Since the local court's role is primary, the Commission's rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(1).)

Complaints about subordinate judicial officers come before the Commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has the right to seek review by the Commission. When closing the complaint, the local court is required to advise the complainant to seek such review within 30 days. (California Rules of Court, rule 10.703(l)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. (California Rules of Court, rule 10.703(k)(1); Commission Rule 109(c)(3).) Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (California Rules of Court, rule 10.703(k)(2); Commission Rule 109(c)(3), (4).) Lastly, the Commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. [California Rules of Court, rule 10.703(g)(2); Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation of the subordinate judicial officer if it appears that the local court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. To facilitate the Commission's review of complaints and discipline involving commissioners and referees, the California Rules of Court require local courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rules 10.603(c)(4)(C) and 10.703.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

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The Constitution requires the Commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern investigation of judges and formal proceedings (discussed above in Section II, Commission Procedures) also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of Commission determinations upon petition by the subordinate judicial officer to the California Supreme Court.

2006 STATISTICS

Complaints Received and Investigated

In 2006, 129 new complaints about subordinate judicial officers were reviewed by the Commission. Because the local courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was any basis for further investigation or action by the Commission.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition
Rule 109(c)(2) – at the request
of a local court0
Rule 109(c)(3) – notification by
local court of discipline1
Rule 109(c)(4) – notification by
local court of resignation with
investigation pending0

2006 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/06	3
New Complaints Considered	129
Cases Concluded in 2006	130
Cases Pending 12/31/06	2

Cases Concluded

In 2006, the Commission concluded its review of 130 complaints involving subordinate judicial officers. All of these complaints were closed by the Commission because the Commission determined that the local courts' handling and disposition of the complaints were adequate and that no further proceedings by the Commission were warranted. One of these cases involved a subordinate judicial officer who had been suspended by the local court. Another matter involved a subordinate judicial officer who resigned in lieu of termination by the local court. In this case, the Commission conducted an investigation and reviewed the matter to determine whether any further action by the Commission was appropriate, in particular, whether proceedings should be instituted concerning the individual's fitness to serve as a subordinate iudicial officer. The Commission determined to close the case, but referred information concerning the complaint to the State Bar.

At the end of the year, two matters remained pending.

Type of Court Case Underlying Subordinate Judicial Officer Complaints Concluded in 2006

Small Claims	4%
Family Law)%
Traffic 10)%
General Civil	3%
Criminal	4%
All Others (including off-bench)	4%

V. SUBORDINATE JUDICIAL OFFICERS

SOURCE OF COMPLAINTS Involving Subordinate Judicial Officers Concluded in 2006

Litigant/Family/Friend	95%
Judge/Court Staff	2%
Attorney	. 1%
All other complainants	2%

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VI. JUDICIAL DISABILITY RETIREMENT



VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. The application procedure is set forth in Division V of the Commission's Policy Declarations (Appendix 1, section C). Pertinent statutes are included in Appendix 1, section F. Disability retirement proceedings are confidential, with limited exceptions.

Judges are eligible to apply for disability retirement after either four or five years on the bench, depending on when they took office. This prerequisite does not apply if the disability results from injury or disease arising out of and in the course of service.

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and satisfy a higher burden of proof if the application is filed while disciplinary proceedings are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician or physicians to review medical

records, examine the judge, and report on whether the judge meets the test for disability retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiner, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the Commission may review the judge's medical status every two years prior to age 65, to ascertain whether he or she remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly, the Commission's Policy Declarations require

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physicians who support a judge's disability retirement application to specify the judicial duties that cannot be performed due to the condition in question. When the Commission approves an application, it may prepare findings specifying those duties. Upon request of the Judges' Retirement System, the Commission may provide information about a disability retirement application to assist in determining whether to terminate benefits.

INVOLUNTARY DISABILITY RETIREMENT

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the Commission. Because the absent judge is not available for judicial service,

the Commission will invoke its disciplinary authority and conduct an investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the Commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

2006 STATISTICS

At the beginning of 2006, four disability retirement applications were pending before the Commission. The Commission received two additional applications during the year. The Commission granted three disability retirement applications and denied one application during 2006. Two applications were pending at the close of 2006.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

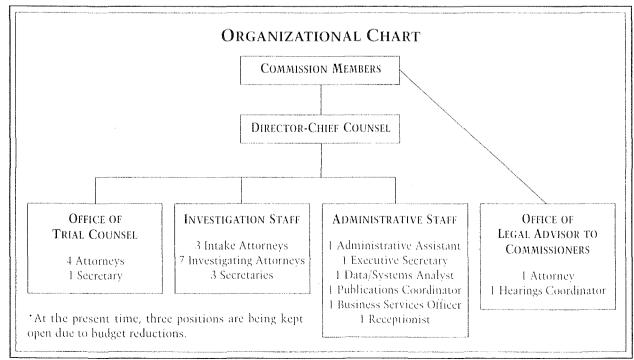
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. Due to budget reductions in fiscal year 2003-2004, it was necessary for the Commission to lay off some employees and to reduce the work hours of others. Because the budget reductions continued into 2006-2007, three positions are being kept vacant and other positions are filled part-time, resulting in an overall staffing reduction of 18%.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the pri-

mary liaison between the Commission and the judiciary, the public, and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 attorney positions assigned to the evaluation and investigation of complaints. Of these, three are responsible for reviewing and evaluating new complaints, and seven are responsible for conducting staff inquiries and preliminary investigations.

Two Trial Counsel serve as examiners during formal proceedings, aided by two Assistant Trial Counsel. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing



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regarding special masters' reports, and presents cases or ally and in writing in hearings before the Commission and the California Supreme Court.

One member of the Commission's legal staff, the Legal Advisor to Commissioners, is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters and for the coordination of formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the Commission. Jay Linderman served as Legal Advisor to Commissioners from September 2003 until January 2007. Bernard Knapp was appointed to the position in January 2007.

2006 - 2007 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2006-2007 fiscal year, the Commission's budget allocation is \$4,378,000.*

The Commission's constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the Commission receive no salaries, only reimbursement of expenses related to Commission business. The Commission's performance

* Allocation includes mid-year adjustments.

of its core functions is dependent upon legal and support staff, thus the Commission's budget is largely allocated to personnel expenses. Prior to the 10% funding reduction in fiscal year 2003-2004, the Commission's budget for operating expenses – excluding rent – was \$500,000 per year. The rent for the Commission's offices, located in a State building, is fixed by the State.) To reduce the Commission's expenses by \$408,000 the amount of the 2003-2004 budget reduction the Commission restricted investigative travel and reduced spending in almost every other aspect of its operations. Nonetheless, reductions in staffing were required. Funding has not been restored, thus the measures taken to reduce expenditures remained in effect through 2006.

2005 - 2006 BUDGET

The Commission's final budget allocation for 2005-2006 was \$4,093,000. During the 2005-2006 fiscal year, approximately 32% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 25% of the Commission's budget was used in connection with formal proceedings. The remaining 43% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

